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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 29.11.2007.

Chandgi Ram son of Shri Sohan Lal,
resident of Village Mundia Khera,
District Mahendergarh, Haryana.

...Petitioner.

vs.

State of Haryana through Commissioner,
Panchayat and Development Department,
to Government of Haryana at Chandigarh and others

...Respondents.

Coram: **Hon'ble Mr. Justice K.S.Garewal.**
Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Rao D.S.Nirban,Advocate,for the petitioner.

R.S.Madan, J.

The claim of the petitioner is that a compromise was effected with respect to exchange of land bearing khasra no.269 between respondent no.4 and father of the petitioner. The said compromise had attained the finality as no appeal or revision was filed. He, thereafter, constructed a house thereon. As per the petitioner, respondent no.5 filed an application before the Assistant Collector 1st Grade, Mohindergarh (respondent no.3), under Section 7 of the Village Common Land Act, against him due to political rivalry, stating therein that the petitioner has encroached upon the land owned by the Gram Panchayat which is a rasta. Respondent no.3 vide his order dated 16.6.2003 observed that there is an encroachment on 2 marlas of land in khasra no.595 which is causing obstructions in the rasta.

Aggrieved by the order dated 16.6.2003, respondent no.5 filed an appeal before respondent no.2, who vide his order dated 6.11.2003

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remanded the case to respondent no.3 to comply with the Rule 20 of the Act in respect of khasra no.595. Respondent no.3 in compliance of remand order passed order dated 6.1.2006 holding that the petitioner is in illegal possession of 2 marlas of land in khasra no.595 only and directed the petitioner to remove the same within ten days.

Against the order dated 6.1.2006, the petitioner filed an appeal before respondent no.2. Vide order dated 18.5.2006, the appeal was accepted by respondent no.2, who remanded the case to respondent no.3 with a direction to demarcate the disputed land in the presence of the parties and also to decide the question of title involved about the disputed land. In compliance of the remand order dated 18.5.2006, respondent no.3 appointed Local Commissioner to demarcate the land. The Local Commissioner submitted his report dated 8.9.2006, Annexure P5, which reflects that the petitioner has encroached upon 2 marlas land in khasra no.595.

Learned counsel for the petitioner contended that the Local Commissioner had gone to the spot to demarcate the land of khasra nos.269 and 595. According to him, it was mandatory for the Local Commissioner to demarcate the land in the presence of the parties. He also contended that the petitioner has not been offered any opportunity to lead evidence in support of his case. Before passing the impugned order, the doctrine of *audi alteram partem* was not adhered to by the authorities. Hence, the order passed by the Assistant Collector 1st Grade is not in accordance with the directions issued to him by the Appellate Authority.

We have gone through the impugned order, Annexure P6. There is no force in the contention of the learned counsel for the petitioner. On receipt of the remand order dated 13.6.2006, the Assistant Collector 1st

Grade appointed a Local Commissioner in the presence of the parties. The petitioner instead of associating himself with the demarcation proceedings, has chosen to stay away for the demarcation proceedings for the reasons best known to him. The Local Commissioner visited the spot on 8.9.2006 and demarcated khasra nos.269 and 595 and noticed that encroachment was committed by the petitioner by acquiring 2 marlas of land in khasra no.595. The relevant part of his report is reproduced as under:-

> "*After making it was found that Chandi Ram Kishan Lal s/o Sohan Lal have constructed pucca residential house by including khasra No.595E17, W17, Sx, N2 40 ft, 2 marlas land in their khasra No.644 and khasra No.269 also e17, W16, S9-1/2, N2 measuring 13 marlas is included in khasra No.644 and constructed pucca residential houses which is shown in map as red mark A, B, C in khasra No.595 and in khasra No.269 is shown as red as mark DEFG.*"

Thereafter, on 9.10.2006, the Assistant Collector 1st Grade also inspected the spot and found that the petitioner has encroached upon the Panchayat Land. The petitioner had also filed objections against the report of the Local Commissioner but copy of the same has not been placed on the record of this Court. The petitioner has himself admitted that he is not in possession of any part of khasra no.595 but is in possession of khasra no.269, therefore, he has no grudge against the said order. He has been asked to remove the illegal occupation of 2 marlas of land forming part of khasra no.595 only.

We have also gone through the report of the Local Commissioner, Annexure P5, which reflects that he has not committed any

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illegality while demarcating the land in dispute and followed the proper procedure as per guidelines of the Financial Commissioner.

Finding no merit in the writ petition, it is dismissed.

(R.S.Madan)
Judge

29.11.2007. **(K.S.Garewal)**
vs. **Judge**.